

SECRET

3-36/3

21 June 1957

MEMORANDUM FOR: OFFICE OF GENERAL COUNSEL

VIA : Deputy Director (Support)
Deputy Director (Plans) *PC*

SUBJECT : Delegation to the Central Intelligence
Agency of Authority to apply Secrecy
Orders to Patent Applications

1. Discoveries made in the course of the TSS Research and Development program have already resulted in the filing of patent applications on which secrecy orders must eventually be applied.

2. It is understood that the Office of General Counsel, following informal discussions with TSS, has been investigating the steps which must be taken in order that the necessary authority be delegated to the Agency to apply such secrecy orders in conformity with existing legislation. The purpose of this memorandum is to confirm the request that the Office of General Counsel obtain the authority required by the Agency to issue such orders.

3. It is felt that it is essential that the Agency obtain this authority. While it is impossible to predict how many secrecy orders might be required, it would not be improbable to expect that a minimum of 3 or a maximum of 10 instances of this sort may occur annually as a result of TSS programs alone. Other elements of the Agency undoubtedly will increase this number.

4. Unless the Agency is so designated and receives this power, it will be obliged to try to persuade a designated agency to act on its behalf. While it might be possible to persuade the Department of Defense, for example, to act on our behalf on occasions, it is not felt that we could impose on them in all cases since the exercise of this authority carries with it a financial liability to the inventor who may claim compensation for damages arising from the

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secrecy order. From the point of view of security, it is also undesirable to be obliged to work through another Government Agency.

5. In view of the foregoing, it is hoped that the Office of General Counsel will be successful in obtaining the required authority for this Agency and that this authority will be available when needed to apply secrecy orders on certain patent applications by TSS' contractors which are now in process.



Chief, DD/P/TSS

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SECRET

SECRECY OF CERTAIN INVENTIONS AND LICENSES TO FILE APPLICATIONS IN FOREIGN COUNTRIES

The following regulations relating to the secrecy of certain inventions and licenses to file applications in foreign countries, have been established under authority of sections 6 and 188 of Title 35, United States Code, as enacted July 19, 1952, Public Law 593, ch. 950, 66 Stat. 792; they interpret or apply sections 181 to 188 of Title 35.

These regulations were published in the Federal Register for February 20, 1953, 18 F. R. 1011. They form Part 5 of Title 37 of the Code of Federal Regulations.

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SECRECY ORDERS

5.1 Defense inspection of certain applications. In accordance with the provisions of 35 U. S. C., section 181, applications for patent containing subject matter the disclosure of which might be detrimental to the national security are made available for inspection by defense agencies as specified in said section. Only applications obviously relating to national security, and applications within fields indicated to the Patent Office by the defense agencies as so related, are made available. Such inspection must be at the Patent Office and by responsible representatives of the agency who are required to sign a dated acknowledgment of such access accepting the condition that information obtained from the inspection will be used for no other purpose than in the administration of sections 181-188 of Title 35, U. S. Code. Applications relating to atomic energy are made available to the Atomic Energy Commission as specified in section 144 of the Atomic Energy Act of 1946 (Rule 14).

5.2 Secrecy order. When notified by the chief officer of a defense agency that publication or disclosure of the invention by the granting of a patent would be detrimental to the national security, an order that the invention be kept secret will be issued by the Commissioner of Patents.

The secrecy order is directed to the applicant, his successors, any and all assignees, and their legal representatives; hereinafter designated as principals.

A copy of the secrecy order will be forwarded to each principal of record in the application and will be accompanied by a receipt, identifying the particular principal, to be signed and returned.

The secrecy order is directed to the subject matter of the application. Where any other application in which a secrecy order has not been issued discloses a significant part of the subject matter of the application under secrecy order, the other application and the common subject matter should be called to the attention of the Patent Office. Such a notice may include any material such as would be urged in a petition to rescind secrecy orders on either of the applications.

5.3 Prosecution of application under secrecy order; withholding patent. Unless specifically ordered otherwise, action on the application by the office and prosecution by the applicant will proceed during the time an application is under secrecy order to the point indicated below:

(a) Applications under secrecy order which come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Appeals in such cases must be completed by the applicant but unless otherwise specifically ordered by the Commissioner will not be set for hearing until the secrecy order is removed.

(b) Interferences may be declared involving an application under secrecy order but unless otherwise specifically ordered or permitted such interferences are suspended after the approval of the preliminary statements.

(c) When the application is found to be in condition for allowance except for the secrecy order, the applicant and the agency which caused the secrecy order to be issued will be notified. This notice (which is not a notice of allowance under section 1.311 of this chapter (Patent Rule 311)) does not require response by the applicant and places the application in a condition of suspension until the secrecy order is removed. When the secrecy order is removed the Patent Office will issue a notice of allowance under section 1.311 (Patent Rule 311) or take such other action as may then be warranted.

5.4 Petition for rescission of secrecy order. A petition for rescission or removal of a secrecy order may be filed by, or on behalf of, any principal affected thereby. Such petition may be in letter form, and it must be in duplicate. The petition must be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been filed with the Patent Office by the agency which caused the secrecy order to be issued.

The petitioner must recite any and all facts that purport to render the order ineffectual or futile if this is the basis of the petition. When prior publications or patents are alleged the petition must give complete data as to such publications or patents and should be accompanied by copies thereof.

The petition must identify any contract between the Government and any of the principals, under which the subject matter of the application or any significant part thereof was developed, or to which the subject matter is otherwise related. If there is no such contract, the petition must so state.

Unless based upon facts of public record, the petition must be verified.

5.5 Permit to disclose or modification of secrecy order. Consent to disclosure, or to the filing of an application abroad, as provided in 35 U. S. C. 182, shall be made by a "permit" or "modification" of the secrecy order.

Petitions for a permit or modification must fully recite the reason or purpose for the proposed disclosure. Where any proposed discloser is known to be cleared by a defense agency to receive classified information, adequate explanation of such clearance should be made in the petition including the name of the agency or department granting the clearance and the date and degree thereof. The petition must be filed in duplicate and be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been furnished to the department or agency which caused the secrecy order to be issued.

In a petition for modification of a secrecy order to permit filing abroad, all countries in which it is proposed to file must be made known, as well as all attorneys, agents and others to whom the material will be consigned prior to being lodged in the foreign patent office. The petition should include a statement vouching for the loyalty and integrity of the proposed disclosers and where their clearance status in this or the foreign country is known all details should be given.

Consent to the disclosure of subject matter from one application under secrecy order may be deemed to be consent to the disclosure of common subject matter in other applications under secrecy order so long as not taken out of context in a manner disclosing material beyond the modification granted in the first application.

The permit or modification may contain conditions and limitations.

5.6 General and group permits. Organizations requiring consent for disclosure of applications under secrecy order to persons or organizations in connection with repeated routine operation may petition for such consent in the form of a general permit. To be successful such petitions must ordinarily recite the security clearance status of the disclosers as sufficient for the highest classification of material that may be involved.

Where identical disclosers and circumstances are involved, and consent is desired for the disclosure of each of a specific list of applications, the petitions may be joined.

5.7 Compensation. Any request for compensation as provided in 35 U. S. C. 183 must not be made to the Patent Office but should be made directly to the department or agency which caused the secrecy order to be issued. Upon written request persons having a right to such information will be informed as to the department or agency which caused the secrecy order to be issued.

5.8 Appeal to Secretary. Appeal to the Secretary of Commerce, as provided by 35 U. S. C. 181, from a secrecy order cannot be taken until after a petition for rescission of the secrecy order has been made and denied. Appeal must be taken within 60 days from the date of the denial, and the party appealing, as well as the department or agency which caused the order to be issued will be notified of the time and place of hearing. The appeal will be heard and decided by the Secretary or such officer or officers as he may designate.

LICENSES FOR FOREIGN FILING

5.11 License for filing application in foreign country. (a) When no secrecy order has been issued under section 5.2, a license from the Commissioner of Patents under 35 U. S. C. 184 is required before filing any application for patent or for the registration of a utility model, industrial design, or model, in a foreign country, or causing or authorizing such filing, with respect to an invention made in the United States, if

(1) The foreign application is to be filed or its filing caused or authorized before an application for patent is filed in the United States, or

(2) The foreign application is to be filed, or its filing caused or authorized, prior to the expiration of six months from the filing of the application in the United States.

(b) When there is no secrecy order in effect, a license under 35 U. S. C. 184 is not required if

(1) The invention was not made in the United States, or

(2) The foreign application is to be filed, or its filing caused or authorized, after the expiration of six months from the filing of the application in the United States.

(c) When a secrecy order has been issued under section 5.2, an application cannot be filed in a foreign country in any case except in accordance with section 5.5.

5.12 Petition for license. Petitions for license under 35 U. S. C. 184 may be presented in letter form and should include petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner.

5.13 Petition for License: No corresponding U. S. Application. Where there is no corresponding United States application, the petition for license must be accompanied by a legible copy of the material upon which license is desired. This copy will be retained as the measure of the license granted. For assistance in the identification of the subject matter of each license so issued, it is suggested that the petition or requesting letter be submitted in duplicate and provide a title and other description of the material. The duplicate copy of the petition will be returned with the license or other action on the petition.

5.14 Petition for License: Corresponding U. S. Application. Where there is a corresponding United States application on file the petition for license must identify this application by serial number, filing date, inventor, and title, and a copy of the material upon which the license is desired is not required. The subject matter licensed will be measured by the disclosure of the United States application. Where the title is not descriptive, and the subject matter is clearly of no interest from a security standpoint, time may be saved by a short statement in the petition as to the nature of the invention.

Two or more United States applications should not be referred to in the same petition for license unless they are to be combined in the foreign application, in which event the petition should so state and the identification of each United States application should be in separate paragraphs.

Where the application to be filed abroad contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter not disclosed in any of them, a copy of the application as it is to be filed in the foreign country must be furnished with the petition. If, however, all new matter in the application to be filed is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

5.15 Scope of license. A license to file an application in a foreign country, when granted, includes authority to forward all duplicate and formal papers to the foreign country and to make amendments and take any action in the prosecution of the application, provided subject matter additional to that covered by the license is not involved. In those cases in which no license is required to file the foreign application, no license is required to file papers in connection with the prosecution of the foreign application not involving disclosure of additional subject matter. Any paper filed abroad following the filing of a foreign application, which involves the disclosure of additional subject matter must be separately licensed in the same manner as an application.

Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided additional subject matter is not introduced.

A license does not apply to acts done before the license was granted unless the petition specifically requests and describes the particular acts and the license is worded to apply to such acts.

5.16 Effect of secrecy order. Any license obtained under 35 U. S. C. 184 is ineffective if the subject matter is under a secrecy order, and a secrecy order prohibits the exercise of or any further action under the license unless separately specifically authorized by a modification of the secrecy order in accordance with section 5.5.

5.17 Who may use license. Licenses may be used by any one interested in the foreign filing for or on behalf of the inventor or his assigns.

GENERAL

5.21 Effect of modification, rescission or license. Any consent, rescission or license under the provisions of this part does not lessen the responsibilities of the principals in respect to any Government contract or the requirements of any other Government agency.

5.22 Papers in English language. All papers submitted in connection with petitions must be in the English language, or be accompanied by an English translation and a translator's certificate as to the true, faithful and exact character of the translation.

5.23 Correspondence. All correspondence in connection with this part, including petitions, should be addressed to "Commissioner of Patents (Attention Division 70), Washington 25, D. C."

Sec.

- 181. Secrecy of certain inventions and withholding of patent.
- 182. Abandonment of invention for unauthorized disclosure.
- 183. Right of compensation.
- 184. Filing of application in foreign country.
- 185. Patent barred for filing without license.
- 186. Penalty.
- 187. Nonapplicability to certain persons.
- 188. Rules and regulations, delegation of power.

§ 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth herein-after.

Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner and the Commissioner shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner shall thereupon maintain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the grant of a patent withheld for a period of more than one year. The Commissioner shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security.

§ 182. Abandonment of invention for unauthorized disclosure

The invention disclosed in an application for patent subject to an order made pursuant to section 181 of this title may be held abandoned upon its being established by the Commissioner that in violation of said order the invention has been published or disclosed or that an application for a patent therefor has been filed in a foreign country by the inventor, his successors, assigns, or legal representatives, or anyone in privity with him or them, without the consent of the Commissioner. The abandonment shall be held to have occurred as of the time of violation. The consent of the Commissioner shall not be given without the concurrence of the heads of the departments and the chief officers of the agencies who caused the order to be issued. A holding of abandonment shall constitute forfeiture by the applicant, his successors, assigns, or legal representatives, or anyone in privity with him or them, of all claims against the United States based upon such invention.

§ 183. Right to compensation

An applicant, his successors, assigns, or legal representatives, whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance, or February 1, 1952, whichever is later, and ending six years after a patent is issued thereon, to apply to the Secretary of Commerce for an order that the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government,

resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. The head of the department or agency authorized, upon the presentation of a claim, to enter into an agreement with the applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use. This settlement agreement shall be conclusive for all purposes not withstanding any other provision of law to the contrary. If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, his successors, assigns, or legal representatives, a sum not exceeding 75 percentum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States in the Court of Claims or in the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just compensation for the damage and/or use of the invention by the Government. The owner of any patent issued upon an application that was subject to a secrecy order issued pursuant to section 181 of this title, who did not apply for compensation as above provided, shall have the right, after the date of issuance of such patent, to bring suit in the Court of Claims for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. In a suit under the provisions of this section the United States may avail itself of all defenses it may plead in an action under section 1498 of title 28. This section shall not confer a right of action on anyone or his successors, assigns, or legal representatives who, while in the full-time employment or service of the United States, discovered, invented, or developed the invention on which the claim is based.

§ 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been inadvertently filed abroad and the application does not disclose an invention within the scope of section 181 of this title.

The term "application" when used in this chapter includes applications and any modifications, amendments, or supplements thereto, or divisions thereof.

§ 185. Patent barred for filing without license

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such person, his successors, assigns, or legal representatives shall be invalid.

§ 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than two years, or both.

§ 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission.

§ 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to carry out the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter.

PO-216
(1-53)

ADDRESS ONLY
THE COMMISSIONER OF PATENTS
WASHINGTON 25, D. C.

Approved For Release 2005/06/29 : CIA-RDP62-00631R000200010022-6

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Serial No.

Filed

Division

For

Applicant

Assignee

RESCINDING ORDER

The Secrecy Order dated prohibiting
disclosure or publication of the subject matter of the above entitled
application under the provisions of Title 35 United States Code (1952)
181-188 is hereby rescinded. Normal prosecution is continued and any
suspension thereof because of the secrecy order should now be removed.
This rescinding order does not affect the provisions of any classified
government contract or existing laws relating to espionage and national
security.

Assistant Commissioner

ARMED SERVICES PATENT ADVISORY BOARD

Washington, D. C.

Commissioner of Patents

United States Patent Office

ATTENTION: Division 70

SUBJECT: Recommendation of SECRECY for
U. S. patent application Serial No.
Filed
Inventor
Title

Dear Sir:

The above-identified application has been examined by representatives of the Armed Services Patent Advisory Board, formerly the Army and Navy Patent Advisory Board, Which was created at the invitation of the Secretary of Commerce for the purpose of assisitng the Commissioner of Patents in the administration of Title 35 U.S.C. 181.

It is recommended that the subject application be placed under order of SECRECY in accordance with the provisions of the above cited Act.

It is further recommended that
with the secrecy order.

issue

Sincerely yours,

DONALD F. VOSS
1st Lieutenant, JAGC
Department of the Army
Secretary

cc to Army Section Records
cc to Navy Section Records
cc to

ADDRESS ONLY
THE COMMISSIONER OF PATENTS
WASHINGTON 25, D. C.

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Serial No.

Division

The application is further identified in the accompanying secrecy order of this date, which refers to this permit.

PERMIT A

An order of secrecy having been issued in the above-entitled application by the Commissioner of Patents the principals as designated in said order are authorized to disclose the subject matter to any person of the classes hereinafter specified if such person is known to the principal disclosing to be concerned directly in an official capacity with the subject matter, provided that all reasonable safeguards are taken to otherwise protect the invention from unauthorized disclosure. The specified classes are:-

- (a) Any officer or employee of any department, independent agency, or bureau of the Government of the United States.
- (b) Any person designated specifically by the head of any department, independent agency or bureau of the Government of the United States, or by his duly authorized subordinate, as a proper individual to receive the disclosure of the above indicated application for use in the prosecution of the war.

The principals under the secrecy are further authorized to disclose the subject matter of this application to the minimum necessary number of persons of known loyalty and discretion, employed by or working with the principals or their licensees and whose duties involve cooperation in the development, manufacture or use of the subject matter by or for the Government of the United States, provided such persons are advised of the issuance of the secrecy order.

When requested in writing by a responsible official of the United States Government known to the party making disclosure to be directly concerned in an official capacity with the subject matter, authorization is further given to disclose the subject matter to accredited representative of an allied government. For the sake of the record and for their protection, the principals should promptly inform the Commissioner of Patents of such disclosures together with the names and official designations of the persons to whom disclosure is made.

The provisions of this permit do not in any way lessen responsibility for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and national security.

Public Law 256, 1 February 1952 (Invention Secrecy Act of 1951)

I language [redacted] practically identical w/ memo 8/9/51

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Secretary of Commerce upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Secretary of Commerce, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Legislative History - House Report 1028, 82nd Congress, 1st Session

"...If the Government has a property interest, issuance of a secrecy order requires only a recommendation to the Commissioner of Patents by the head of the department or agency involved. The phrase "property interest" is intended to include the ownership of all rights in the invention or to a lesser interest therein such as, for example, cases where the foreign rights are retained by the inventor, or where the Government is entitled only to the interest of one or more joint inventors, and not to the interest of all the joint inventors. This group will

consist in the main of inventions made by Government employees or Government contractors. In the other group, the Secretary of Commerce informs the heads of the defense agencies of patent applications whose disclosure might be detrimental to the national security. This group consists for the most part of inventions made by persons not in contact with the Government. It is necessary for the Secretary of Commerce to call the attention of the defense agency to the particular application, since they would otherwise have no knowledge of such application. The opinion of the defense agency concerned is controlling and the order that the invention be kept secret will be made pursuant thereto.

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Approved For Release 2005/06/29 : CIA-RDP62-00631R000200010022-6

Approved For Release 2005/06/29 : CIA-RDP62-00631R000200010022-6